

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

Lobby

r.02

DO NOT WRITE IN THIS SPACE

Case 30-CB-5566	Date Filed May 20, 2010
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INSTRUCTIONS. File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Brewery Workers Local 9, UAW (Amalgamated), AFL-CIO	b. Union Representative to contact Pat Weyer, President
c. Address (Street, city, state, and ZIP code) 9618 W. Greenfield Ave. West Allis, WI 53214	d. Tel. No. 414-475-5898 e. Cell No. f. Fax No. 414-475-6001 g. e-Mail

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) **(1)(A)** of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about April 29, 2010, the above-named Union, through its officers, agents or representatives, failed and refused to fairly represent **(b) (6), (b) (7)(C)** and similarly situated employees, for unfair arbitrary, invidious, and discriminatory reasons by settling their grievances and failing or refusing to arbitrate their grievances concerning pension benefits.

RECEIVED MAY 20 PM 12:47

3. Name of Employer MillerCoors	4a. Tel. No. X 414 931 2986 c. Fax No. X 414 931 3558	b. Cell No. d. e-Mail
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5. Location of plant involved (street, city, state and ZIP code) 4000 West State Street Milwaukee, WI 53208	6. Employer representative to contact Tim Sheridan
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7. Type of establishment (factory, mine, wholesaler, etc.) brewery	8. Identify principal product or service beer	9. Number of workers employed X ~ 400
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10. Full name of party filing charge (b) (6), (b) (7)(C), an individual	11a. Tel. No. (b) (6), (b) (7)(C) c. Fax No. 	b. Cell No. d. e-Mail
11. Address of party filing charge (street, city, state and ZIP code.) (b) (6), (b) (7)(C)		

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By **(b) (6), (b) (7)(C)** **(b) (6), (b) (7)(C)**
(Signature) (Print/Type name and title or office, if any)

(b) (6), (b) (7)(C)
Address (date) **5/20/10**

Tel. No. (b) (6), (b) (7)(C)
Cell No.
Fax No.
e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

310 West Wisconsin Avenue - Suite 700W

Milwaukee, WI 53203-2211

Telephone (414)297-3873

FAX (414) 297-3880

www.nlrb.gov

May 20, 2010

Mr. Pat Weyer, President
Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO
9618 West Greenfield Avenue
West Allis, WI 53214

**Re: Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO
(MillerCoors)
Case 30-CB-5566**

Dear Mr. Weyer:

Please be advised that a charge, copy enclosed, has been filed in the matter described above and has been assigned to **Board Agent Ermira N. Hayes, who can be reached at (414)297-3873 or via e-mail at Ermira.Hayes@nlrb.gov**. The case name and number should be noted on all responses to us.

The Board Agent will begin investigating this matter within a few days and will shortly be in contact with both the Charging Party and you as the Charged Party. We would appreciate your cooperation and assistance during the investigation. We would especially appreciate promptly receiving from you in advance of your contact with the Board Agent a full factual account and your statement of position concerning the allegations of the charge. By this means, the investigation can proceed more pointedly and be concluded more quickly.

When the Board Agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board Agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board Agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the Board Agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board Agent does not

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: <http://www.nlr.gov> (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

constitute full and complete cooperation. Further, please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Thus, any claim of confidentiality cannot be honored except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. In this regard, we are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. Further, we may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the foregoing laws, regulations and policies.

I call your attention to the NLRB's *Policies and Procedures for Electronic Communications with the NLRB*, which describes the Agency's most recent provisions in that regard. A copy of this document is enclosed with this letter.

We are also enclosing several forms, NLRB Forms 4701 and 4541. The forms simply explain our procedures, and allow you to designate your counsel or other representative for this matter.

A copy of this letter, together with applicable documents, is also being sent to the Charging Party (person who filed the charge), who, by this notice, is also advised to be prepared to promptly submit all evidence and position statements which Charging Party wishes us to consider.

In order to ensure that persons with limited English proficiency have access to the Board's services, assistance is available through the Regional Office. You should notify the Board Agent assigned to this matter at the earliest opportunity that this case may involve individuals with limited English proficiency. Additionally, individuals with limited English proficiency should be advised that the Board's Regional Office will, to the extent possible,

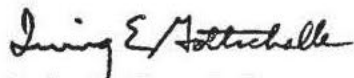
May 20, 2010

provide or secure translation assistance.¹ Many of the Agency's documents and publications are currently in Spanish and in the future may be available in other languages.

Please be advised that under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organization(s) or person(s) who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

Customer service standards concerning the processing of unfair labor practice cases have been published by the Agency and are available on the Agency's website at www.nlrb.gov, under "Public Notices".

Very truly yours,



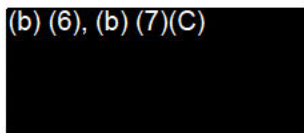
Irving E. Gottschalk
Regional Director

Enclosures

Charge
NLRB-4541
NLRB-4701
Policies and Procedures for Electronic
Communications with the NLRB

cc:

(b) (6), (b) (7)(C)



¹ The National Labor Relations Board will provide assistance to individuals with limited English. If you or anyone involved in this case is in need of assistance due to their limited English, please advise this Office as soon as possible.

La Junta Nacional de Relaciones de Trabajo proveerá asistencia a personas con ingles limitado. Si usted necesita asistencia debido a su ingles limitado, debe avisar a esta Oficina tan pronto posible.



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 30

310 West Wisconsin Avenue – Suite 700

Milwaukee, WI 53203-2211

Telephone (414)297-3873

FAX (414)297-3880

www.nlr.gov

June 28, 2010

(b) (6), (b) (7)(C)

**Re: Brewery Workers Local 9, UAW (Amalgamated)
AFL-CIO (MillerCoors)
Case 30-CB-5566**

Dear (b) (6), (b) (7)(C):

The Region has carefully investigated and considered your charge against Brewery Workers Local 9, UAW (Amalgamated) AFL-CIO alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

The charge alleges that Brewery Workers Local 9 (Union) breached its duty of fair representation when it settled your, and other similarly situated employees', grievances short of arbitration, on terms that you deem unfavorable. You claim that your pension benefits for the years that you served in the Employer's brewery department were improperly calculated based upon the rate at the time of your transfer. You identified a retiring employee, who had also transferred departments, and was allowed to transfer back for one day in order to bring (b) (6), (b) (7)(C) pension rate to present day dollars; you and other transferred employees requested that the Union file a grievance to obtain the same treatment. The grievances were denied by the Employer at the third step. The Union initially decided to proceed to arbitration. Before arbitration the Employer offered a settlement which the Union accepted.

A labor union has a statutory duty of fair representation "to serve the interests of all members without hostility or discrimination toward any." *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). However, the Union has broad discretion in processing grievances including the right to settle a grievance short of arbitration. *Turner v. Air Transp. Dispatchers' Ass'n*, 468 F.2d 297, 300 (5th Cir.1972). The Board generally will defer to grievance settlements entered into by the Union and Employer, even over the grievants' objections and when the settlements do not provide full remedies. *United States Postal Service*, 300 NLRB 196 (1990); *Alpha Beta Company*, 273 NLRB 1546 (1985). To find that a union did not fairly represent employees, it must be shown that the union acted arbitrarily, discriminatorily, and in bad faith. See *Vaca supra*. Finally, unions are afforded a wide range of reasonableness with respect to their duty to represent employees and with respect to processing and arbitrating grievances. *Airline Pilots Assoc., Int'l v. O'Neill*, 499 U.S. 65, 111 S.Ct. 1127, 1136 (1991).

As noted above, the Union processed your grievance through the third step of the grievance procedure and scheduled the matter for arbitration. The investigation further disclosed that at all times the Union made a good faith evaluation of the merits of the grievance. Prior to arbitration the Union and Employer exchanged settlement proposals. Ultimately, the Union accepted a settlement proposal that provided, in part, for substantially increased pension benefits, even though it did not include certain other financial benefits you sought. You and other affected employees rejected the proposal, while another employee accepted the proposed settlement. The evidence showed that the Union's decision to accept the settlement and not proceed to arbitration was based on its good faith evaluation of the risks of litigation and was not based on any arbitrary, discriminatory or bad faith reasons.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date and Time: The appeal is due on July 12, 2010. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than July 9, 2010.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or

material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Irving E. Gottschalk
Regional Director

Enclosures

cc: Mr. Pat Weyer, President
Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO
9618 West Greenfield Avenue
West Allis, WI 53214

General Counsel (Attn: Office of Appeals)¹ via e-mail
National Labor Relations Board
Franklin Court
1099 14th Street, N.W.
Washington, DC 20570

¹ The fax number for Appeals is 202-273-4283. As stated above, you can only fax your extension of time request, not any appeal.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

July 27, 2010

Re: Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO (MillerCoors)
Case No. 30-CB-5566

(b) (6), (b) (7)(C)

Dear (b) (6), (b) (7)(C):

Receipt of your appeal in the above matter is acknowledged. Upon receipt of the investigative file from the Regional Director, the appeal will be assigned for processing. You may be assured your appeal will receive careful consideration and that you and all interested parties will be advised, as soon as possible, of our decision.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By _____
Yvonne T. Dixon, Director
Office of Appeals

cc: Irving E. Gottschalk, Regional Director
National Labor Relations Board
310 West Wisconsin Avenue, Suite 700
Milwaukee, WI 53203

Pat Weyer, President
Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO
9618 West Greenfield Avenue
West Allis, WI 53214

btb



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

September 17, 2010

Re: Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO (MillerCoors)
Case No. 30-CB-5566

(b) (6), (b) (7)(C)

Dear (b) (6), (b) (7)(C):

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons set forth in the Regional Director's letter of June 28, 2010. In this regard, the evidence fails to establish that the Union breached its duty of fair representation on your behalf by accepting a settlement with which you disagreed concerning your benefits.

Although you believe that you were in a unique position concerning your rehire status, the evidence indicates that the Union accepted a settlement that it believed was in the interest of those impacted as a whole. There is no evidence that the Union harbored any hostility towards you or that it failed to consider your particular circumstances for unlawful reasons. In this regard, it appears that you are contending that you were given the wrong seniority under the contract. Even assuming, but without finding that the contract could be read as you wished, the fact that the Union read the contract differently and negotiated a settlement based on its assessment of its overall chances of prevailing on the grievance does not constitute a basis for finding a violation based on the Union's failure to pursue arbitration. Accordingly, further proceedings are deemed unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By _____
Deborah M.P. Yaffe, Acting Director
Office of Appeals

cc: Irving E. Gottschalk, Regional Director
National Labor Relations Board
310 West Wisconsin Avenue, Suite 700
Milwaukee, WI 53203

Pat Weyer, President
Brewery Workers Local 9, UAW
(Amalgamated) AFL-CIO
9618 West Greenfield Avenue
West Allis, WI 53214

crk